



Republican Policy Committee

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Product Liability Update

Coverdell-Dole Amendment Protects Small Businesses In All Civil Suits

On Friday, Senator Coverdell, for himself and Senate Republican Leader Dole, offered a compromise amendment to the product liability bill currently pending on the floor.

The compromise contains the text of the Commerce Committee-reported bill, sponsored by Senators Gorton and Rockefeller, which dramatically reforms and improves product liability law.

Additionally, the Coverdell-Dole proposal buttresses the product liability bill in several respects:

- ▶ It replaces the flat caps on punitive damages for product liability actions with the so-called "Snowe language." The Snowe language brings certainty to punitive damages in product liability cases, restraining any punitive judgment to up to twice compensatory damages (economic and non-economic loss).
- ▶ It extends protections on punitive damages to small businesses in all civil suits, not just product liability actions. For cases in which a small business is involved (25 or fewer employees, or individuals with a net worth of \$500,000 or less), punitive damage judgments would be the lesser of \$250,000, or the Snowe language.
- ▶ It removes the alternative dispute resolution (ADR) provisions in the committee-reported legislation (section 103), which contained a penalty against defendants, not plaintiffs, who chose not to employ ADR but who were later found guilty.
- ▶ It avoids an interpretative controversy over civil rights law by not including modified changes to Rule 11 of the *Federal Rules of Procedure*.

State of Play: Vote(s) Today

A cloture petition on the Coverdell-Dole amendment was filed on Friday; it will ripen for a vote, per unanimous consent, at 4:00pm Monday. First-degree amendments to the substitute must be filed by 1:00pm; second-degree amendments must be filed by 3:00pm.

Per Senator Coverdell, the Majority Leader has indicated that unless significant progress is made on the substitute, with the offering of, debating on, and agreeing to vote on significant amendments to the Coverdell-Dole substitute, the cloture vote will occur at 4:00pm. However, if significant progress is made, the cloture vote will be postponed until Tuesday. The Majority Leader will determine what constitutes significant progress.

An additional cloture petition is set to ripen on Tuesday.

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